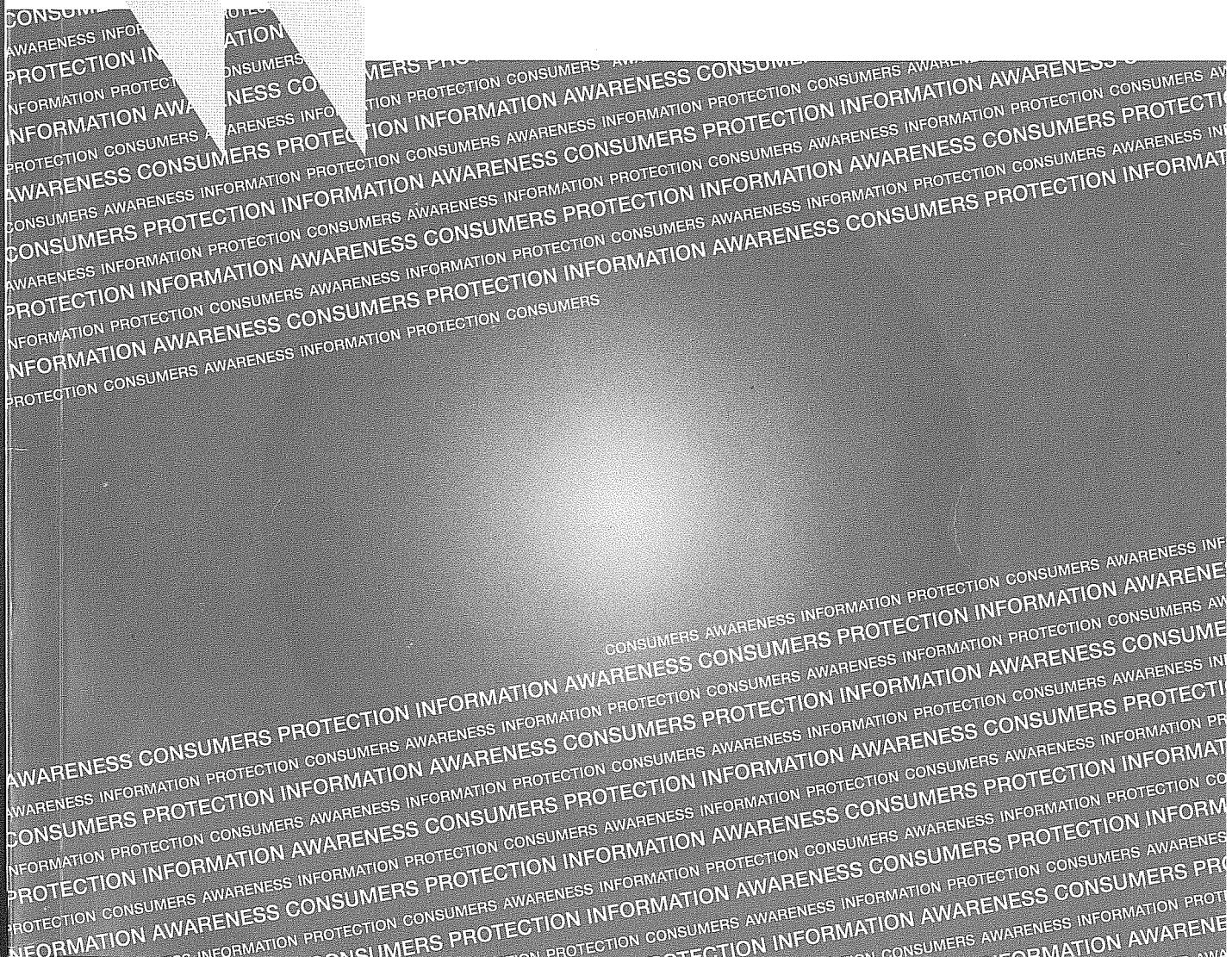


Consumer Policy Toolkit



- **Warnings:** Warning that a failure to correct a problem could result in formal measures (such as regulations), being taken. For example, after an insufficient number of instant-loan companies followed the Finnish Consumer Authority's warning to limit their activities to daytime hours, the government introduced a statutory regulation to address the issue (Finnish Consumer Agency, 2010).

The effectiveness of moral suasion rests upon a number of supply-side factors, including the cohesiveness of the industry, the number of industry players, their relative market power and any entrenched positions they may have. The effectiveness of moral suasion also relies upon the robustness of the policy or action in question and various factors relating to public views, including:

- A government's perceived commitment to that policy.
- The form in which the government's position is conveyed to the public.
- The level of trust in the government held by the public.

Codes of conduct and trustmarks

Codes of conduct and trustmarks are tools that can be used by governments and/or industry to help establish and consolidate good business practices.

Codes of conduct

A code of conduct is a set of principles and rules that govern the way industries and institutions should behave toward their stakeholders (Carson, 2008). Such codes are so varied it is difficult to provide a definition that adequately describes them all. Depending on the purpose and nature of a code, responsibility for developing, administering and enforcing compliance with it can rest with the government (through regulators or consumer authorities, for example), with the signatories to the code themselves, or there could be shared responsibility. Adherence to a code could be voluntary, or it could be mandated, either as a condition of membership in an organisation, or by law.

Factors which should be considered in deciding whether such a code would be appropriate and effective are summarised in Box 4.7 (see also ACCC, 2005, Australian Government, 1998a, Australian Government, 1998b, and the UK OFT's criteria for approving consumer codes at www.offt.gov.uk/advice_and_resources/small_businesses/codes/).

The balance of this section focuses on codes that are developed and administered largely by industry. These codes can provide advantages over direct government regulation, although as noted above, many rely on some form of endorsement or oversight by government to be effective and credible. The potential advantages include (ACCC, 2005):

- They can be more flexible than legislation and can be amended more quickly to keep abreast of changes in industries' needs.
- The demands on government resources are likely to be lower, while business compliance costs can often be less as well.
- Industry participants often have a greater sense of ownership of the code, which is likely to lead to a stronger commitment to comply with it.
- Industry-led complaint-handling procedures under industry-developed codes can be cost-effective, time-efficient and user-friendly in resolving complaints.

The self-regulation that goes hand-in-hand with industry-developed codes has the potential to achieve improvements in business practices using negotiation and

Box 4.7. Factors to consider in developing a code of conduct

- Factors that may be relevant in developing a code of conduct include:
 - ❖ The consumer issue being addressed; for example, would a code of conduct aid consumers in:
 - ❖ Evaluating the quality of the product?
 - ❖ Identifying a competent supplier?
 - Getting defective products fixed or securing redress?
 - The nature of the industry concerned. How the following could influence the effectiveness of a code should be considered:
 - ❖ The size and structure of the industry.
 - ❖ Other industry characteristics such as the geographic spread and cohesiveness of the industry.
 - ❖ The history of the industry in relation to the objective of the code.
 - ❖ The existence, coverage and strength of an industry association.
 - The types of existing or proposed standards which are aimed at addressing the issue (and the existence of supporting mechanisms for these standards).
 - The current degree of confidence, trust, or credibility the industry has with the community and consumers.
 - Commitment of the industry to self-regulation.
 - Willingness and ability of the code administrator to act against non-compliance.

consultation. Consumers can benefit from a greater focus by firms on customer service and on being responsible for their own behaviour (Truss, 1998). Self-regulation can also play a role in making markets work well for consumers, particularly in terms of the quality of products and services they receive. Self regulation helps achieve better market outcomes by influencing business incentives under conditions which make it difficult for consumers to assess product attributes and for firms to signal quality. Box 4.8 provides additional examples of industry-based codes in several countries.

The OECD's Committee on Consumer Policy is carrying out research on the roles that industry can play in promoting and protecting consumer interests. Case studies of self-regulatory and co-regulatory schemes within the OECD are being examined, with a view to developing insights into the conditions under which these schemes can contribute positively to the overall regulatory framework.

Industry-based codes have limitations in terms of their scope and effectiveness, and more formal government interventions, including legislation, may be needed to address issues effectively. In these situations, government endorsement of codes can be used to enhance compliance with the code.

Research suggests that industry-enforced codes of conduct tend to be more effective when the self-regulatory body has widespread industry support, comprises representatives of the key stakeholders (including consumers, consumer associations, the government and other community groups) and operates an effective system of complaints handling (ACCC, 2005).

Box 4.8. Examples of voluntary codes of conduct

In the United Kingdom, the Office of Fair Trading has approved Codes of Practice for a number of industries where consumer problems were being experienced. Participation is voluntary. Details of the requirements necessary for approval and a list of approved codes can be found at www.oft.gov.uk/advice_and_resources/small_businesses/codes/ (UKOFT, undated).

The US Direct Selling Association administers a voluntary code of ethics (see www.dsa.org/ethics/). It aims to ensure that members do not make statements or promises that might mislead either consumers or prospective salespeople. The code is enforced internally and consumers have access to a range of remedial actions including complete restitution, repair, request for an increase in advertising about the code, and request for written commitment to the code.

Sources: Direct Selling Association (United States) (undated), *Code of Ethics*, www.dsa.org/ethics/, accessed on 11 March 2010 and UKOFT (United Kingdom Office of Fair Trading) (undated), *Consumer Codes of Practice*, www.oft.gov.uk/advice_and_resources/small_businesses/codes/, accessed on 11 March 2010.

In well-functioning markets, codes of conduct that are devised, implemented, and enforced by industry participants can be effective when designed in conjunction with consumer stakeholders and, if necessary, the government (Verschoor, 1998). Further, the effectiveness of codes increases when the codes are part of a learning process that requires inculcation for industry participants, reinforcement, and measurement (Doig and Wilson, 2002).

On the other hand, the use of a code where other tools, such as regulation, would have been more appropriate can undermine consumer confidence. Thus policy makers should scrutinise codes like all other tools. This can be particularly important when an industry code does not have sufficient coverage of firms or where code enforcement is not treated seriously. As with all governmental tools, an evidence-based assessment of the efficacy of the use of a particular policy instrument is important (ACCC, 2005; UKOFT, 2008a).

Moreover, it should be noted that the effectiveness of codes depends on the extent to which firms comply, and the extent to which there are systems in place for identifying and disciplining firms which do not conform. Provisions for redress when consumers have been harmed as a result of non-compliance also need to be adequate. This is also the case for standards and licensing systems, which are discussed below.

As indicated earlier, policy makers should also scrutinise codes of conduct to ensure that they do not have unintended, anticompetitive side effects. For example, any requirements for minimum entry qualifications set a barrier to entry, and registration requirements have a similar potential to be used in anticompetitive ways (Deighton-Smith et al., 2001). Professional regulation can also contain advertising restrictions. While prohibitions against price advertising, for instance, can be portrayed as a means of ensuring that consumers are not seduced by misleading claims, they can – like a collusive agreement among competitors to refrain from such advertising – lower competition and maintain prices at a higher level than would prevail in a completely free market.

Trustmarks

Firms can also show consumers that they comply with high standards of conduct through other mechanisms, such as trustmarks which are seals (or related symbols) whose

use is approved by independent organisations for firms which comply with a grantor's standards. To be effective, trustmark standards should be clearly articulated and enforced by the seal grantor. In many contexts, such as with BBBOnline or TRUSTe in Canada and the United States, such seals include a mechanism for resolution of consumer complaints.

Trustmarks can assist consumer protection authorities by creating best-practices standards for firms, ensuring compliance with such standards and providing complaint resolution mechanisms for individual consumers. In some cases, authorities can use their powers to enforce promises made by firms to their consumers in the context of a trustmark seal programme. As long as the relative roles of trustmarks and government authorities are clearly defined, the particular functions of trustmarks can be adapted to many contexts. For example, the APEC countries are developing a cross-border privacy-rules system which will use trustmarks to facilitate information flows while protecting privacy with countries that do not have well developed privacy laws or privacy enforcement authorities.

Standards

Standards can be defined as "... published documents setting out specifications and procedures designed to ensure products, services and systems are safe, reliable and consistently perform the way they were intended to. They establish a common language which defines quality and safety criteria" (Standards Australia, undated). They can provide an assured level of quality and safety in manufacturing, making choices easier for consumers. Standards drive competition among firms by pushing them to develop more efficient means of meeting those standards, which in turn can lead to greater innovation. However, in areas more prone to fraud and deception, such as the supply of certain imitation goods and services, where quality and safety are likely to be compromised, standards may fail to inspire consumer confidence if they can be relatively easily circumvented.

Standards may also be used to ensure interoperability of products from different suppliers. They can ensure, for example, that the thread on a screw will be similar, without respect to the manufacturer, or that software packages can be run on various operating systems. Standards can thus increase the range of products available to consumers and increase competition between suppliers. Transaction costs can be reduced simply through a statement of conformity to a known standard.

Development and implementation

Standards can be set by business firms, governments, not-for-profit organisations, trade organisations, or a combination thereof. Independent standards bodies such as the International Standardization Organization (ISO) design standards in a number of areas including environmental sustainability, information technology, shipping and marine technology, food products, and laboratory equipment.

In considering whether establishing a standard would be beneficial, the following factors could be taken into consideration:

- The stakeholder(s) who should be responsible for developing the standard.
- Whether the standard would deliver the desired policy outcome and whether the industry sector concerned would utilise it effectively.
- Whether the standard should be principles-based, performance-based, or prescriptive (see Box 4.9).

Box 4.9. Principles-based, performance-based and prescriptive standards

Principles-based standards establish a general objective that is applied and interpreted in specific instances. For example, a general objective could be established to maintain a level of chemical fumes that would assure worker safety, without quantifying what those levels would be for different chemicals.

Performance-based standards specify a desired outcome in precise terms, but allow individual parties to determine how to achieve the outcome. Using the example above, the performance-based standard would specifically indicate and quantify the acceptable levels of fumes, but leave it to individual parties to choose a method for meeting the standard.

Prescriptive standards specify the technical means for attaining a specified outcome. In this instance both the objective and the means would be specified.

Provided that objectives are specified clearly enough, non-prescriptive approaches may provide a more efficient means of obtaining the objective for the company. In the above example, there would be scope for producing a larger overall reduction in the exposure of workers to fumes (Office of Best Practice Regulation, 2007).

- The costs and benefits of introducing the standard, and whether it should be voluntary or mandatory (see Box 4.10).
- The degree of stakeholder and technical input required for the development of the standard and, if the issue being addressed is time-sensitive, the amount of time it would likely take to develop the standard.
- Whether the standard would limit or otherwise affect competition among firms.

Role of international forums

International forums can play an additional role in improving standards by providing an opportunity for governments, standard-setting bodies, and other organisations to share information on best practices and comparative approaches to the development and implementation of standards. These forums can also facilitate co-operation between jurisdictions on matters of mutual interest.

In the consumer policy area, for example, the ISO has a Committee on Consumer Policy (COPOCO) which provides a forum for the exchange of information and experiences on standards and conformity assessment issues of interest to consumers. The Committee influences the ISO's work by proposing new areas for standardisation where there is a perceived need for enhanced consumer protection. Standards projects have been undertaken on customer satisfaction, environmental management systems, social responsibility, tourism and related services and the trading of second hand goods.

In the product safety area, the growth of international trade and the related increasing importance of safety standards and technical regulations prompted governments to establish an International Consumer Product Safety Caucus (ICPSC) in 2006. The caucus aims to strengthen international government and regulator collaboration and co-operation with a view towards enhancing the exchange of information on consumer product safety issues, with a focus on government policy, legislation and market surveillance. Also, there are other international fora that are active in the product safety area. The OECD, for example, has been examining ways that the sharing of information on consumer product safety issues and developments could be improved.

Box 4.10. Voluntary and mandatory standards

Generally the impetus to develop a voluntary standard comes from an industry body. These standards often seek to establish best practices in relation to a product's general design characteristics. In this regard, voluntary product standards provide an important way of reassuring consumers about the reliability and safety of products, by defining what constitutes quality and establishing safety criteria. These standards may be developed and published by an independent standards body such as the International Standards Organization or nation-based equivalents.

Many countries provide guidance for the development of market standards. For example, the Australian government provides guidance on the development of obligatory standards, which are termed regulatory standards in Australia, for consumer products (ACCC, undated). Consumers can also play a role in the development of standards. In Europe, for example, consumer participation in standard setting is ensured by a general co-ordination body operating at European level, called ANEC (the European Association for the Co-ordination of Consumer Representation in Standardisation) (see www.anec.org/anec.asp) (European Commission, 2010). ANEC's experts participate in technical committees at European and international level; their aim is to help ensure that standards are market-relevant and to provide advice on the manner in which information contained in labels, warning and instructions is provided to consumers.

Regulatory standards are usually introduced by government in response to concerns about a particular product. There are two types of regulatory standards. *Safety standards* require goods to comply with particular performance, composition, contents, methods of manufacture or processing, design, construction, finish, labelling, or packaging rules. *Information standards* prescribe the information or warnings that must be provided to consumers for certain goods. Regulatory standards can be based upon an existing voluntary standard or can be developed as new problems emerge in markets.

Standards may also be created by international organisations. The Codex Alimentarius Commission was created in 1963, for example, by the Food and Agriculture Organization and the World Health Organization to develop international food standards to protect consumer health and to facilitate fair trading practices in foods (FAO and WHO, undated). It also promotes co-ordination of food standards work undertaken by international governmental and nongovernmental organisations (see www.codexalimentarius.net/web/index_en.jsp).

Sources: ACCC (Australian Competition and Consumer Commission) (undated), *What are Mandatory Product Safety and Information Standards?*, ACCC, Canberra www.accc.gov.au/content/index.phtml/itemId/325871, accessed on 9 February 2010; European Commission (2010), Communication with OECD Secretariat, unpublished; FAO and WHO (Food and Agriculture Organization and World Health Organization) (undated), *Codex Alimentarius*, www.codexalimentarius.net/web/index_en.jsp, accessed on 11 March 2010.

Effectiveness of standards

Standards have a range of potential benefits, both direct and indirect, for consumers. They can help to:

- Ensure the safety of products and conformity with relevant legislation.
- Increase the compatibility of products; for example, standards can help ensure that components from different computer hardware and software firms are interchangeable.
- Establish an acceptable level of product quality.
- Make decisions easier for consumers and reduce barriers to switching from one product to another. For example, information standards allow consumers to gain a greater insight into the attributes of products that they purchase.

- Encourage businesses to compete vigorously and thereby improve efficiency and innovation (Blind, 2004).
- Increase economic growth; for example, in the Federal Republic of Germany during the period of 1960-1990, standards were found to have increased economic growth by 0.9% per annum (Jungmittag, Blind and Grupp, 1999).

While standards have significant value, overly prescriptive requirements can create unnecessary barriers to entry for industry entrants and can be costly to firms. Standards that are too high will likely decrease consumer choice. In addition to this, depending on the part of the world, adopting a standard can be a lengthy process, taking more than three years. This sometimes means that the standard making process cannot provide a timely policy response. Finally, there is a risk that minimum standards will establish a norm that is rarely exceeded, particularly if firms have difficulty signalling quality above the minimum. Where distinctions can be made, consideration could be given to establishing a graded standard; a star rating, for example, could be used to signal the extent to which products met or exceeded a standard.

Licensing and accreditation

Licensing can be used in industries where there is a need to guarantee a minimum level of product quality or provide evidence of a minimum level of firm competency. Accordingly, licences can serve to build and maintain consumer confidence. To be meaningful, a licence must be issued by a reputable authority. Typically licences are granted by governments, but in some cases trade or professional bodies do so. Licensing programmes can be structured in a similar manner to trustmark programmes.

Development and implementation

Licences may be appropriate for industry sectors where firms supply goods that are potentially dangerous or where it is inherently difficult for a consumer to know if a firm has the expertise, skills, or knowledge to deliver a satisfactory good or service (Cope, 2005). Table 4.1 provides examples of types of licenses. It should be noted that some of the features listed are not necessarily beneficial to consumers.

Licensing schemes generally have to be registered with a government authority or an industry body which may impose a number of obligations on licence holders. In Finland,

Table 4.1. Examples of professional and occupational regulation and licensing

Type of obligation	Explanation
Entry qualifications	Academic and/or experience qualifications are needed to become a professional (<i>e.g.</i> accountants).
Registration requirements	The firm/individual must hold a licence to practice (<i>e.g.</i> electricians, taxi drivers).
Reservation of title	Only persons with the appropriate qualifications and/or on the register may use the professional title (<i>e.g.</i> health-care professionals).
Reservation of practice	Certain areas of practice are not allowed to be performed by persons other than certified practitioners (<i>e.g.</i> building and construction workers).
Disciplinary processes	Professionals may be asked to explain their actions if their conduct is questioned, and may be disciplined or prevented from practising (<i>e.g.</i> health-care professionals).
Conduct of business	Rules that prescribe ways in which the professional may or may not conduct their business affairs; common restrictions include ownership, profit sharing and advertising. (<i>e.g.</i> financial-service providers)
Business licensing	Firms must be licensed before they are able to sell their services (<i>e.g.</i> food vendors).

Source: Deighton-Smith, R., B. Harris and K. Pearson (2001), *Reforming the Regulation of the Professions*, National Competition Council Staff Discussion Paper, AusInfo, Canberra, www.ncc.gov.au/pdf/PIReStPr-001.pdf.